

Introduced by Senator Kuehl

February 21, 2008

An act to add Article 5.5 (commencing with Section 49010) to Chapter 6 of Part 27 of Division 4 of Title 2 of the Education Code, relating to pupil discipline.

LEGISLATIVE COUNSEL'S DIGEST

SB 1515, as introduced, Kuehl. Pupil discipline: restraint and seclusion.

Existing law prohibits a person employed by or engaged in a public school to inflict, or cause to be inflicted, corporal punishment upon a pupil.

This bill would prohibit an educational provider from using chemical restraint or seclusion, as defined. The bill would specify conditions under which an educational provider would be authorized to use behavioral restraint. The bill would require an educational provider to conduct a debriefing after the use of behavioral restraint, and would require the educational provider to train staff annually in behavioral restraint. The bill would require the State Department of Education to review an educational provider's compliance with training requirements. The bill would require the department to take steps to establish a data collection system regarding the use of behavioral restraint. By imposing additional requirements on local educational agencies, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state,

reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Article 5.5 (commencing with Section 49010) is
2 added to Chapter 6 of Part 27 of Division 4 of Title 2 of the
3 Education Code, to read:

4
5 Article 5.5. Restraint and Seclusion
6

7 49010. The Legislature finds and declares all of the following:

8 (a) Seclusion and restraint are known to cause trauma and injury
9 to both the individual subjected to these techniques and the
10 personnel executing them.

11 (b) The use of seclusion and behavioral restraint are not
12 therapeutic or educational, and their use does not positively change
13 behavior.

14 49011. For purposes of this article, the following definitions
15 apply:

16 (a) "Behavioral restraint" means mechanical restraint or physical
17 restraint used as an intervention when a pupil presents an imminent
18 risk of serious physical harm to self or others. Behavioral restraint
19 does not include restraints used for postural support or devices
20 used to improve a pupil's mobility and independent functioning
21 rather than to restrict movement.

22 (b) "Chemical restraint" means the administration of a drug or
23 medication to manage a pupil's behavior or restrict a pupil's
24 freedom of movement that is not a standard treatment and dosage
25 for the pupil's medical or psychiatric condition.

26 (c) "Department" means the State Department of Education.

27 (d) "Educational provider" means a entity or a person that does
28 both of the following:

29 (1) Receives support in any form from a program supported in
30 whole or in part with funds appropriated by the department.

31 (2) Provides educational or related services, supports, or other
32 assistance to individuals in a public or private elementary or
33 secondary school.

1 Educational provider includes all local educational agencies,
2 including charter schools, the California School for the Deaf, the
3 California School for the Blind, nonpublic schools, and nonpublic
4 agencies.

5 (e) “Mechanical restraint” means the use of a mechanical device,
6 material, or equipment attached or adjacent to the pupil’s body
7 that he or she cannot easily remove that restricts the freedom of
8 movement of all or part of a pupil’s body, or restricts normal access
9 to the pupil’s body, and that is used as a behavioral restraint.

10 (f) “Physical restraint” means the use of a manual hold to restrict
11 freedom of movement of all or part of a pupil’s body, or to restrict
12 normal access to the pupil’s body, that is used as a behavioral
13 restraint. Physical restraint is a staff-to-pupil physical contact in
14 which the pupil unwillingly participates. Physical restraint does
15 not include briefly holding a pupil without undue force in order
16 to calm or comfort or to prevent an isolated incident of
17 unpredictable and spontaneous unsafe behavior, such as running
18 into traffic or engaging in a physical altercation, or physical contact
19 intended to gently assist or prompt a pupil in performing a task or
20 to guide or assist a pupil from one area to another.

21 (g) “Seclusion” means the involuntary confinement of a pupil
22 alone in a room or area from which the pupil physically is
23 prevented from leaving.

24 (h) “Serious injury” means a significant impairment of a
25 person’s physical condition as determined by qualified medical
26 personnel, and includes, but is not limited to, burns, lacerations,
27 bone fractures, substantial hematomas, or injuries to internal
28 organs.

29 49012. (a) An educational provider may use behavioral
30 restraint only if all of the following conditions are met:

31 (1) It is an emergency situation and required to prevent imminent
32 serious physical harm to the pupil, staff, or others.

33 (2) The educational provider has determined that less restrictive
34 alternatives and positive behavioral supports are ineffective.

35 (3) Staff implementing the restraint have completed training
36 that is certified by the department as meeting the training
37 requirements of subdivision (b) of Section 49014.

38 (4) A staff member continuously is present and keeps the pupil
39 under constant face-to-face observation.

(b) Wherever possible, when a pupil is restrained, a staff member not involved in restraining the pupil shall observe the pupil for signs of distress or respiratory compromise.

(c) An educational provider, as soon as possible, but no later than two school days after the use of behavioral restraints, shall conduct a debriefing regarding the incident with the pupil, the pupil's parent or guardian, as well as with the staff members involved in the incident and the program's administrator, to discuss how to avoid a similar incident in the future. The pupil's participation in the debriefing is voluntary. The purpose of the debriefing shall be the following:

(1) Assist the pupil and others to identify the precipitants to the incident, and suggest methods to more safely and constructively respond to the incident.

(2) Assist the staff to understand the precipitants to the incident, and to develop alternative methods of helping the pupil avoid or cope with these incidents.

(3) Help staff devise interventions to address the root cause of the incident and its consequences.

(4) Help assess whether restraint was necessary and whether it was implemented in a manner consistent with staff training and educational provider policies.

(d) The educational provider, in the debriefing, shall provide both the pupil and staff the opportunity to discuss the circumstances resulting in the use of behavioral restraints, and strategies to be used by the staff, the pupil, and others that could prevent the future use of behavioral restraints.

(e) The educational provider shall ensure that staff document in the pupil's record that the debriefing session took place and the changes to the pupil's individual education plan that resulted from the debriefing.

49013. (a) An educational provider shall not use seclusion or chemical restraint.

(b) An educational provider shall not use behavioral restraint for the purpose of coercion, discipline, convenience, or retaliation by staff.

(c) An educational provider shall not use any of the following:

(1) A physical restraint technique that obstructs a pupil's respiratory airway or impairs the pupil's breathing or respiratory capacity, including techniques in which a staff member places

1 pressure on a pupil's back or places his or her body weight against
2 the pupil's torso or back.

3 (2) A pillow, blanket, or other item covering the pupil's face as
4 part of a physical or mechanical restraint.

5 (3) An improvised restraint device, such as a sheet or belt.

6 (4) A physical or mechanical restraint on a pupil who has a
7 known medical, psychological, or physical condition, and where
8 there is reason to believe that the use would endanger the pupil's
9 life or seriously exacerbate the medical, psychological, or physical
10 condition of the pupil. Known risk factors include a history of
11 trauma or abuse, obesity, agitated or excited syndromes, preexisting
12 heart disease, and respiratory conditions, including bronchitis or
13 asthma.

14 (5) Placement of a pupil in a facedown position with the pupil's
15 hands held or restrained behind his or her back.

16 (6) Physical or mechanical restraint as an extended procedure.

17 (d) An educational provider shall avoid the deliberate use of
18 prone restraint techniques whenever possible.

19 49014. (a) All staff of the educational provider executing
20 behavioral restraint in subdivision (a) of Section 49012 shall be
21 trained on an annual basis. The educational provider shall maintain
22 records of staff training.

23 (b) Training shall include information and skills development
24 on the following:

25 (1) The educational provider's behavioral restraint policies and
26 procedures, and applicable state and federal laws.

27 (2) The development and implementation of functional analysis
28 assessments and behavior support and intervention plans that
29 address positive behavioral approaches to address the pupil's
30 behavior prompting the use of behavioral restraint.

31 (3) Interventions that may preclude the need for behavioral
32 restraint, including, but not limited to:

33 (A) Recognizing and responding appropriately to underlying
34 reasons for escalating behavior.

35 (B) Using conflict resolution, effective communication,
36 de-escalation, and pupil-oriented problem solving strategies that
37 diffuse and safely resolve emerging crisis situations.

38 (C) Using positive behavior supports.

39 (4) The physical and psychological risks associated with the
40 use of behavioral restraint.

1 (5) The physical and psychological indicators of distress or
2 trauma associated with the use of behavioral restraint.

3 (6) The educational provider's procedures for securing
4 emergency medical services if needed.

5 (7) The use of behavioral restraint permitted by this chapter.

6 (8) Effective procedures for conducting debriefings after the
7 use of behavioral restraint.

8 (9) The documentation of incidents of behavioral restraint.

9 (10) The reporting procedures required by Section 49015.

10 (c) The department shall review the educational provider's
11 compliance with the training requirement under this section for
12 any of the following:

13 (1) As part of the educational provider's self-review.

14 (2) The verification review by the department of the educational
15 provider.

16 (3) The investigation by the department of any complaint
17 involving the use of behavioral restraint.

18 49015. (a) An educational provider, as soon as possible but
19 no later than one schoolday after the use of behavioral restraints,
20 shall notify the pupil's parents or guardian and the administrator
21 of the educational provider.

22 (b) The administrator of the educational provider and the special
23 education local plan area director shall be notified the same day
24 if more than one behavioral restraint event occurs per pupil per
25 schoolday.

26 (c) An educational provider shall report a death or serious injury
27 of a person occurring during, or related to, the use of behavioral
28 restraint. This report shall be made to the department no later than
29 the close of business day following the death or serious injury.

30 (d) The department shall report each death or serious injury of
31 a person that occurred during, or was related to, the use of
32 behavioral restraint to the protection and advocacy agency
33 designated in subdivision (i) of Section 4900 of the Welfare and
34 Institutions Code no later than the close of business day following
35 the death or serious injury.

36 (e) The department annually shall provide information to the
37 Legislature about the progress made in implementing this division.
38 This information shall include the progress of implementation and
39 barriers to achieving full implementation.

1 49016. (a) The department shall take steps to establish a system
2 of mandatory, consistent, timely, and publicly accessible data
3 collection regarding the use of behavioral restraint. It is the intent
4 of the Legislature that data be compiled in a manner that allows
5 for standard statistical comparison.

6 (b) Data collected pursuant to this section shall include all of
7 the following:

8 (1) Type of intervention.

9 (2) Duration of intervention.

10 (3) Time of initiation and release.

11 (4) Date and day of week.

12 (5) Location of incident, including school and classroom or area
13 where the incident occurred.

14 (6) Episode or events preceding the incident, including whether
15 harm was directed to self, peers, staff, or others.

16 (7) Resulting injuries, if any.

17 (8) Age of pupil.

18 (9) Type of disability of pupil, if any.

19 (10) Whether the pupil has a functional analysis assessment or
20 behavior support or intervention plan and the date of the most
21 recent version.

22 (c) Neither the educational provider nor the department shall
23 be required to implement this section if implementation cannot be
24 achieved with existing resources, unless additional funding for
25 this purpose becomes available. The educational provider and the
26 department incrementally may implement this section in order to
27 accomplish its goals within existing resources through the use of
28 federal or private funding, or upon the subsequent appropriation
29 of funds by the Legislature for this purpose, or all of these.

30 SEC. 2. If the Commission on State Mandates determines that
31 this act contains costs mandated by the state, reimbursement to
32 local agencies and school districts for those costs shall be made
33 pursuant to Part 7 (commencing with Section 17500) of Division
34 4 of Title 2 of the Government Code.